

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

*PRIDE CLEANING AND
RESTORATION, INC.*

Plaintiff,

V.

*ANDRE D. COLE, SR. and
ANDRE'S REMEDIATION AND
RESTORATION, LLC.*

Defendants.

Cause No. 4:16-CV-00090-RLW

JURY TRIAL DEMANDED

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS MOTION FOR DEFAULT
AGAINST DEFENDANT ANDRE’S REMEDIATION AND RESTORATION, LLC**

COMES NOW Plaintiff, H&H Health Associates, Inc., through its attorney, and, pursuant to E.D.Mo.L.R. 4.01(A), files this legal memorandum in support of its Motion for Default Judgment.

“Default judgment for failure to defend is appropriate when the party's conduct includes willful violations of court rules, contumacious conduct, or intentional delays. On the other hand, default judgment is not an appropriate sanction for a marginal failure to comply with time requirements.” *Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856 (8th Cir. 1996).

Plaintiff filed its Complaint on January 22, 2016. Defendant Andre D. Cole, Sr. filed his Answer on February 18, 2016. He says in that Answer he is filing it on his own behalf, and he does not claim to file that Answer on Defendant Andre's Remediation and Restoration, LLC's

behalf. Moreover, Mr. Cole is not an attorney and cannot represent a limited liability company. It has been 68 days since Defendant Andre's Remediation and Restoration, LLC was served, and Defendant Andre's Remediation and Restoration, LLC's has not entered or appeared or otherwise indicated it intends to defend itself. This is not a marginal failure to comply with the 21-day deadline to file a responsive pleading under Rule 12(a)(1)(A)(i), and a default judgment is warranted.

Therefore, Plaintiff moves this Court for a default judgment against Defendant Andre's Remediation and Restoration, LLC, under Rule 55(b)(2)(B) and requests this Court to set a hearing on damages.

THE CAVANAUGH LAW FIRM, L.L.C.

By: /s/ Bryan P. Cavanaugh
Bryan P. Cavanaugh, #50013MO
512 Sunnyside Avenue
St. Louis, MO 63119-2649
(314) 308-2451
(314) 754-7054 (Fax)
E-mail: bcavanaugh@cavanaugh-law.net
Attorneys for Plaintiff

Certificate of Service

I certify that the foregoing pleading was served via first-class U.S. Mail on April 4, 2016 on the following:

Mr. Andre D. Cole, Sr.
5951 Goodfellow Blvd., Suite C
St. Louis, MO 63147
Defendant

/s/ Bryan P. Cavanaugh